

Admin.

December 11, 2013

## First Supplement to Memorandum 2013-54

**New Topics and Priorities: Additional Comments and Suggestions**

The Commission<sup>1</sup> has received several new communications relating to its annual consideration of new topics and priorities. The following materials are attached for the Commission's reference:

	<i>Exhibit p.</i>
• Mark Lomax, Pasadena (12/2/13) .....	1
• Mark Lomax, Pasadena (11/2/13) .....	2
• Michael Millman, Los Angeles (12/3/13) .....	5
• Michael Millman, Los Angeles (12/7/13) .....	6
• Michael Millman, Los Angeles (12/10/13) .....	8
• Lindsay Nichols, Law Center to Prevent Gun Violence (12/5/13) .....	9
• Beverly Pellegrini, Fresno (12/5/13) .....	11

Those materials are briefly discussed below.

## TECHNICAL SUGGESTIONS FROM MARK LOMAX

Attorney Mark Lomax has alerted the Commission to several technical errors in the codes.

**Civil Code Section 1801.4**

After the release of Memorandum 2013-54, we received a letter from Mr. Lomax suggesting that the reference to the "Federal Aviation Act of 1958" in Civil Code Section 1801.4 is outdated because the Federal Aviation Act of 1958 was repealed.<sup>2</sup> He explained that "[t]he provisions on registration of aircraft

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1. Any California Law Revision Commission document referred to in this memorandum can be obtained from the Commission. Recent materials can be downloaded from the Commission's website ([www.clrc.ca.gov](http://www.clrc.ca.gov)). Other materials can be obtained by contacting the Commission's staff, through the website or otherwise.

The Commission welcomes written comments at any time during its study process. Any comments received will be a part of the public record and may be considered at a public meeting. However, comments that are received less than five business days prior to a Commission meeting may be presented without staff analysis.

2. See Exhibit p. 1.

previously contained in the Federal Aviation Act of 1958 are now contained in 49 U.S.C. section 44101 et seq.”<sup>3</sup>

The staff reviewed the citations provided in Mr. Lomax’s letter and confirmed that the reference to the Federal Aviation Act of 1958 is indeed outdated. Public Law 103-272 (July 5, 1994) repealed that act and recodified its provisions. Section 1 of the Public Law indicates that the effect of that law is revise, codify, and enact “without substantive change” certain general and permanent laws related to transportation. Section 5 of the Public Law contains conforming cross-references, including replacing references to the Federal Aviation Act of 1958 with references to the codified provisions.<sup>4</sup>

The revision suggested by Mr. Lomax appears to be a straightforward technical correction. **The staff recommends referring the matter to the Office of Legislative Counsel, for possible inclusion in the 2014 bill on maintenance of the codes.**

#### **Code of Civil Procedure Sections 398 and 399**

In an earlier letter, Mr. Lomax alerted the Commission to some technical issues relating to Code of Civil Procedure Sections 398 and 399, which are venue provisions.<sup>5</sup> The staff did not discuss that letter in Memorandum 2013-54, because the provisions in question are within the scope of two topics already in the Commission’s workload: the studies of venue in a civil case and trial court restructuring.

In fact, the Commission already investigated the technical issues relating to Code of Civil Procedure Section 398 a number of years ago (at the suggestion of Mr. Lomax), but decided to refrain from recommending any revisions to that provision until it considered certain substantive questions relating to the provision.<sup>6</sup> Mr. Lomax’s recent reiteration of his technical concerns **underscores the importance of completing the Commission’s work on trial court restructuring and commencing its study of venue in a civil case.**

We do not anticipate, however, that the Commission will be able to devote significant resources to either of those studies in the near future. **The staff thus recommends referring the technical suggestions relating to Sections 398 and**

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3. *Id.*

4. See, e.g., 108 Stat. 1373-1378.

5. See Exhibit pp. 2-4.

6. See *Civil Procedure: Technical Corrections*, 30 Cal. L. Revision Comm’n Reports 479, 486 n. 11 (2000); Tentative Recommendation on *Civil Procedure: Technical Corrections* (Oct. 2000), pp. 11-12; Memorandum 2001-4, p.7; Memorandum 2000-72, Attachment pp. 10-11.

**399 to the Office of Legislative Counsel, for possible inclusion in the 2014 bill on maintenance of the codes.**

NEW COMMENTS FROM MICHAEL MILLMAN

Mr. Millman sent several additional comments after Memorandum 2013-54 was released.<sup>7</sup> In his comments, Mr. Millman reiterates his concerns about a “judicial Courtroom crisis in Los Angeles” and provides further detail about this issue. Mr. Millman clarifies that his proposed pilot is only intended to permit an uncontested eviction case “where the only issue is non-payment of rent” to proceed in small claims.<sup>8</sup> In addition, Mr. Millman indicates that his suggestion to increase the jurisdictional limit of small claims is intended to apply to all cases, not just eviction matters.<sup>9</sup>

COMMENTS OF LINDSAY NICHOLS ON BEHALF OF  
THE LAW CENTER TO PREVENT GUN VIOLENCE

Memorandum 2013-54 discusses a suggestion from attorney C.D. Michel (on behalf of the National Rifle Association and some of his other clients) concerning Penal Code Section 32390 and the circumstances under which a large-capacity magazine may be treated as a nuisance. For a number of reasons, the staff advised against pursuing his suggestion.<sup>10</sup>

Lindsay Nichols of the Law Center to Prevent Gun Violence urges the Commission to follow the staff’s recommendation on this matter.<sup>11</sup> She explains her organization’s position in detail.<sup>12</sup>

NEW COMMENTS FROM BEVERLY PELLEGRINI

Ms. Pellegrini sent an additional comment in response to the discussion of her suggestions in Memorandum 2013-54.<sup>13</sup> In that comment, Ms. Pellegrini provides suggestions of different data that could provide evidence of abusive litigation in probate courts (e.g., “the number of trust cases in Probate Court that never reach the Appellate Court”). In addition, she clarifies that the concern she originally

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7. Exhibit pp. 5, 6.

8. Exhibit p. 5.

9. Exhibit p. 8.

10. See Memorandum 2013-54, pp. 41-51.

11. Exhibit p. 9.

12. *Id.* at 9-10.

13. Exhibit p. 11.

raised “specifically excluded cases where there is fraud or misuse of trust assets on the part of the trustee.” She suggests that “[i]n cases where truth is not easily discernible on the surface, bonds should be required of the petitioner” to “prevent ... meritless litigation from diminishing” the trust’s funds. Finally, Ms. Pellegrini reiterates her concern that “[l]itigation harms families.”

Respectfully submitted,

Kristin Burford  
Staff Counsel

Barbara Gaal  
Chief Deputy Counsel

Brian Hebert  
Executive Director

Mark W. Lomax, Attorney at Law

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December 2, 2013

DEC -0 2013

Mr. Brian Hebert  
Executive Director  
California Law Revision Commission  
4000 Middlefield Rd., Room D-2  
Palo Alto, CA, 94303-4739

Dear Mr. Herbert:

**OBSOLETE REFERENCE IN THE CIVIL CODE**

I am writing to draw your attention to an obsolete reference in Civil Code section 1801.4, in the Unruh Act (Civil Code §§1801-1812.20), concerning retail installment contracts and accounts.

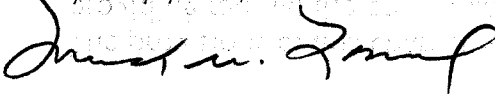
Civil Code section 1801.4 provides:

The provisions of this chapter shall not apply to any contract or series of contracts providing for: (a) the construction, sale, or construction and sale of an entire residence, including a mobilehome, or all or part of a structure designed for commercial or industrial occupancy, with or without a parcel of real property or an interest therein, (b) for the sale of a lot or parcel of real property, including any site preparation incidental to such sale, (c) the sale of any aircraft required to be registered under the **Federal Aviation Act of 1958**, or (d) the sale of any vessel as defined in subdivision (a) of Section 9840 of the Vehicle Code if the cash price of such vessel, including accessories and equipment sold in conjunction therewith, exceeds twenty-five thousand dollars (\$25,000).

The Federal Aviation Act of 1958, 49 U.S.C. section 1301 et seq., was repealed and its provisions reorganized and reenacted in 1994. (Pub.L. No. 103-272 (July 5, 1994) 108 Stat. 1161.) The provisions on registration of aircraft previously contained in the Federal Aviation Act of 1958 are now contained in 49 U.S.C. section 44101 et seq.

I bring this to your attention in accordance with Government Code section 8289.

Very truly yours,



MARK W. LOMAX

# Mark W. Lomax, Attorney at Law

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NOV 6 2013

November 2, 2013

Mr. Brian Hebert  
Executive Director  
California Law Revision Commission  
4000 Middlefield Rd., Room D-2  
Palo Alto, CA, 94303-4739

Dear Mr. Herbert:

## OBSOLETE REFERENCES IN THE CODE OF CIVIL PROCEDURE

I am writing to draw your attention to obsolete references in two Code of Civil Procedure sections.

### Section 398

Code of Civil Procedure section 398, regarding transfer of actions and proceedings between courts, contains two errors, one an obsolete cross-reference and the other an obsolete reference to a record no longer maintained.

Section 398 provides:

If, for any cause, specified in **subdivisions 2, 3 and 4** of section 397, the court orders the transfer of an action or proceeding, it must be transferred to a court having jurisdiction of the subject matter of the action which the parties may agree upon, by stipulation in writing, or made in open court and entered in the minutes **or docket**; or, if they do not so agree, then to the nearest or most accessible court, where the like objection or cause for making the order does not exist.

If an action or proceeding is commenced in a court, other than one designated as a proper court for the trial thereof by the provisions of this title, and the same be ordered transferred for that reason, it must be transferred to any such proper court which the parties may agree upon by stipulation in writing, or made in open court and entered in the minutes **or docket**; if the parties do not so agree, then to any such proper court in the county in which the action or proceeding was commenced which the defendant may designate, or, if there be no such proper court in such county, to any such proper court, in a proper county, designated by the defendant; if the parties do not so agree, and the defendant does not so designate the court, as herein provided, or where the court orders the transfer of an action on its own

motion as provided in this title, to such proper court as the court in which the action or proceeding is pending may determine.

The designation of the court by the defendant, herein provided for, may be made in the notice of motion for change of venue or in open court, entered in the minutes **or docket**, at the time the order for transfer is made.

In the first paragraph of section 398, the reference to subdivisions of 2, 3, and 4 of section 397 should be to subdivisions (b), (c), and (d) of section 397.

The other obsolete reference, contained in each of the section's three paragraphs, is to an entry in a "docket," a court record no longer maintained by trial courts in civil cases. Background on the history of the statutes requiring the keeping of the record and on the repeal of those statutes can be found in the 2001 Law Revision Commission comment to Code of Civil Procedure section 472b.

### Section 399

Code of Civil Procedure section 399, also regarding transfer of actions and proceedings between courts, contains an obsolete reference to oral pleadings.

Section 399 provides in part:

(a) When an order is made transferring an action or proceeding under any of the provisions of this title, the clerk shall, after expiration of the time within which a petition for writ of mandate could have been filed pursuant to Section 400, or if a writ petition is filed after judgment denying the writ becomes final, and upon payment of the costs and fees, transmit the pleadings and papers therein (**or if the pleadings be oral a transcript of the same**) to the clerk of the court to which the same is transferred.

The parenthetical phrase in subdivision (a)—"or if the pleadings be oral a transcript of the same"—is a reference to the oral pleadings once allowed in justice court civil cases. The last statute authorizing oral pleadings in justice courts was former Code of Civil Procedure section 422.20, subdivision (c), which was added by chapter 244 of the Statutes of 1971 and repealed by chapter 1257 of the Statutes of 1977.\* Since the repeal of section 422.20, there has been no statutory authorization for oral pleadings in civil cases.

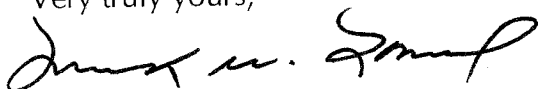
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\*Chapter 1257 also added a new section 422.20, which made the rules of pleading in justice courts the same as those in municipal courts. (Stats. 1977, ch. 1257, §11.)

Mr. Brian Hebert  
California Law Revision Commission  
November 2, 2013  
Page 3

I bring these obsolete provisions to your attention in accordance with subdivision (c) of Government Code section 8289.

Very truly yours,

A handwritten signature in black ink, appearing to read "Mark W. Lomax". The signature is fluid and cursive, with the first name "Mark" being more prominent than the last name "Lomax".

MARK W. LOMAX



Law Offices of  
**Michael Millman & Associates**

December 3, 2013

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Law Revision Commission  
Nathaniel Sterling  
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**DEC -0 2013**

Law Revision Commission  
Brian Herbert  
3200 Fisk Ave.  
Sacramento, CA 95817

Re: Eviction Protocol  
Small Claims Court Jurisdiction

Gentlemen:

As you're well aware, there is a Judicial Courtroom crisis in Los Angeles. There are few Courtrooms available, and in Los Angeles, about a dozen or more Courthouses have been closed. Many of the Courtrooms are now being utilized for Evictions, and under the Shriver pilot program, Attorneys are asking routinely for Jury Trials, even when there are no substantial issues to be submitted to a Jury.

To make a long story short, it's clear that the Shriver Jury project has been abused.

For small, uncontested Eviction actions, where the only issue is non-payment of rent, it would appear that we should allow the matter to proceed to Small Claims Court. No Attorneys. The case can be handled in 20 minutes or less. The question becomes whether or not the rent was paid; and if so, was the notice timely served. Again, it would be a 10 minute Trial.

Let's do a pilot program in San Diego, San Francisco and Los Angeles County. Try it for 18 months.

I think you'll discover that Judicial economy has been promoted.

I would like to address your Commission. I'd like to receive a schedule of your meetings.

Thank you again.

Very truly yours,

Michael Millman  
e-mail: michaelmillman@gmail.com

Law Offices of  
**Michael Millman & Associates**

December 7, 2013

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Kristin Burford, Staff Counsel  
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DEC 11 2013

Re: Meeting - December 13, 2013  
San Diego  
Small Claims Court Jurisdiction  
Personal Injury Jurisdiction

Dear Ms. Burford:

Thank you for your note.

I don't believe Staff have fully and completely investigated the merits of my several proposals.

First, most of the Commissioners who used to handle SMALL CLAIMS COURT have been released or terminated. Real Judges handle the cases.

Now, a real Judge is able to direct his or her questioning of the parties in a manner wherein a Small Claims Court eviction action can be resolved in less than 5 to 10 minutes.

Remember, we are suggesting cases involving rental disputes only.

Or situations where a Tenant has received a 60-day notice to surrender and vacate the premises in an unregulated, Non-Rent-Controlled jurisdiction.

That's a simple case.

"Did you receive the notice?"

"Yes."

"Have you moved?"

"No."

"Submit it."

This is a 5-minute or less examination.

"Did you receive your 3-day notice to pay rent or quit?"

"Yes."

"Have you made the rental payment?"

"No."

You don't need to tie up a Courtroom for four to six months because some Attorneys representing Eviction Defendants have demanded a Jury Trial under the Pilot Shriver Program.

So, the Shriver Lawyers are asking for a five to seven day Trial estimate.

In Small Claims Court, the case can be handled in 20 minutes or less. A Judgement for possession is rendered together with damages.

Let's be clear: 50% of the cases in Small Claims Court now involve the failure of Owners or others to refund security deposits. Yes, Landlord/Tenant law.

In any event, right now in Los Angeles County there are four Courthouses that handle Evictions. Remember, a half dozen or more Courthouses were shut down. Those four "hub" Courtrooms that handle Evictions are overcome by the extortion currently being employed by Eviction Defense Lawyers seeking Jury Trials.

So, what would happen if we have Small Claims Court Pilot Program for Eviction? Lawyers would show up--although they can't testify--in the hallway. They meet the Defendant, make the settlement, do the paperwork, hand it to their client who would hand it to the Clerk, and the case is over.

99% of those cases involving Eviction get settled in the hallway.

Staff hasn't done research.

## PERSONAL INJURY

Why do you want to tie up dozens of Courtrooms on simple, soft tissue, moderate impact auto collision cases. You don't. Move the Small Claims Court jurisdiction to \$15,000. It's at \$10,000 now. Let's get rid of the backlog. Remember, a Small Claims Court Judge can handle an auto versus auto case in 10 minutes or less.

What is the problem?

This is called judicial economy. I believe that these proposals have merit. I don't think Staff has done the investigation. Are there any meetings in Los Angeles for the law revision? My good friends at the Consumer Lawyers only care about legal malpractice and big cases.

Merry Christmas.

Your Friend Always,

Michael Millman

EX 7

**EMAIL FROM MICHAEL MILLMAN**  
**(12/10/13)**

Thank you: My office obtain your excellent Report and Material. Now, I feel that The Consumer Attorneys will support an increase of the Small Claims Court to \$ 15,000 because the increase to \$ 10,000 has not caused any Problem with Parties/Attorneys and the Courts. Small Auto Accident Case in Small Claims Court can be handled in less 10 Minutes.

The Shriver Project has caused many small Eviction case to be set on Jury Trial Calendar which means a delay of 4 /5 Months in order to find a Available Court Room; The Apartment Owners can not wait and have been making Large Settlements: Now, These small Eviction Case should not be able to get Jury Trial selections: Never: Exhorts ion has been used by the Shriver Project Attorneys ? I feel that the Meeting of your Group should have been in Los Angeles : Please arrange to copy this Note and provide your Members: Thanks Call me 310 477 1201



December 5, 2013

**VIA EMAIL**

California Law Revision Commission Members  
c/o Barbara Gaul, , Chief Deputy Counsel  
California Law Revision Commission

**Re: Large Capacity Magazines as a Nuisance**

Dear Honorable Commission Members,

On behalf of the Law Center to Prevent Gun Violence (formerly Legal Community Against Violence), I write to endorse the Staff's approach to the issue raised in the Law Revision Commission's Staff Memorandum 2013-54 regarding the wording of the statute declaring large capacity ammunition magazines to be a nuisance. Founded by lawyers after an assault weapon massacre at a San Francisco law firm in 1993, the Law Center provides legal expertise in support of gun violence prevention to federal, state, and local legislators nationwide.

The Commission's Staff Memorandum describes a letter the Commission received from C.D. Michel, attorney for the NRA and members of the gun industry, in October ("the NRA letter"). The letter advocates for a change in the wording of Penal Code § 32390, which declares large capacity ammunition magazines to be nuisances, and claims that the Commission's 2010 reorganization of the deadly weapons statutes "inadvertently" changed the scope of this statute.

Former section 12029 expressly declared certain items to be nuisances, including "any other item which is listed in subdivision (a) of Section 12020." Large capacity magazines are listed in section 12020(a). Consequently, the Commission rightly included within its reorganization section 32390's declaration that large capacity magazines are nuisances. Section 32390 did not alter the scope of existing law, but simply tracks the language of former section 12029.

The NRA letter does not raise any issue that shows a need for amending this statute. The NRA letter focuses on the fact that state law does not impose a criminal penalty for possession of large capacity magazines, and argues that they can therefore not be nuisances if they were acquired before the state ban on their sale was enacted. However, as the Staff Memorandum recognizes (page 48), there is a distinction between criminalizing possession of an item, and authorizing law enforcement to seize and destroy the item, as occurs for nuisances.

Furthermore, as the Staff Memorandum notes (page 49), the Legislature did not expressly limit the circumstances when large capacity magazines could be considered a nuisance in former section 12029, although it did for certain other weapons. If the Legislature had wanted only large capacity magazines obtained after the state ban to be considered nuisances, it would have said so expressly.

Most importantly, ammunition magazines do not carry a serial number or any other indication of when they were manufactured or sold. There is therefore no way for law enforcement to trace a particular magazine or determine when it was manufactured or sold. As a result, the NRA's proposed limitation would make section 32390 significantly more difficult to enforce.

As the Staff Memorandum notes (page 46), the NRA did not raise this issue during the Commission's multi-year study of the deadly weapons statutes or during the entire legislative process. The NRA letter also does not explain why it did not raise this issue earlier, except that the "problems caused by the language only recently surfaced." In fact, the NRA is raising the issue at this late date in an attempt to garner support from the Law Revision Commission for a change in existing law that suits its current interests. More specifically, the NRA is responding to the efforts of certain local governments, including the City of Los Angeles, to strengthen their local ordinances regarding large capacity ammunition magazines. The NRA aims to throw a wrench in those efforts by suggesting that state law strictly limits local authority to regulate in this area, when in fact it does not.

Finally, as the Staff Memorandum recognizes (page 51), SB 396 (Hancock) bears closely on this topic. That bill, which is pending, would expand the state's ban on large capacity magazines to apply to the possession of such magazines, regardless of when they were obtained. In keeping with the Commission's practice not to interfere with pending, substantive legislation, we respectfully urge the Commission to reject the NRA's attempt to involve the Commission in these matters.

Sincerely,

A handwritten signature in black ink that reads "Lindsay Nichols". The signature is written in a cursive, flowing style.

Lindsay Nichols  
Law Center Attorney

**EMAIL FROM BEVERLY PELLEGRINI**  
**(12/5/13)**

Dear Ms. Buford:

Thank you for your response to my inquiry.

I believe that there is much widespread abuse of the probate courts regarding litigation, but it is generally under the radar.

This can be seen in the number of published and unpublished decisions issued from the Appellate Court. Evidence can also be attained by investigating the number of trust cases in Probate Court that never reach the Appellate Court. Another avenue of investigation can be seen by the number of attorneys endeavoring in trust litigation.

The issue that I raised was specifically excluded cases where there is fraud or misuse of trust assets on the part of the trustee. In these cases, I am in agreement that beneficiary rights should be protected. But when the fraud, malicious intent, and meritless action is being brought by a contingent remainder with no evidence or possible proof and no discoverable evidence that will support such malicious allegations and when the trust document does not support the allegations contained in the contingent remainder's petition, allowing these cases to go forward on the basis of a presumption that the allegations are true, is clearly wrong and is an abuse of the Courts. Court that allow these actions to proceed are participating in the wrongdoing and should be held accountable.

In cases where truth is not easily discernible on the surface, bonds should be required of the petitioner. If the action has merit, the petitioner will have his bond returned to him. If the action is without merit, however, the posting of bond will prevent the meritless litigation from diminishing the trustee-beneficiary's funds and will prevent the loss of funds for future beneficiaries who are not parties to the action.

Litigation harms families. It cannot be public policy to destroy families in the interest of contingent remainders who receive no present income or principal from the trust and depending on the financial circumstances, may never receive any gift from the trust even without any wrongdoing. I believe that trust disputes among family members can be solved within the family. It may take time, but it would seem more helpful to sustaining the family even if it were to take a year for the family to solve its problems. In well-documented cases, it often takes more than one year or two to solve the problem in Courts.

Sincerely,

B. Pellegrini